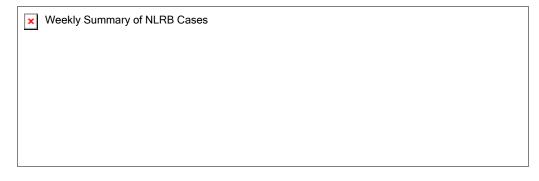
ABOUT THE WEEKLY SUMMARY

The Weekly Summary of NLRB cases, as the name implies, is a publication that summarizes each week all published NLRB decisions in unfair labor practice and representation election cases, except for summary judgment cases. It also lists all decisions of NLRB administrative law judges and direction of elections by NLRB regional directors. Links are established from the weekly summary index to the summaries and from the summaries to the full text of the decisions.



Index of Back Issues Online

December 7, 2001 W-2820

CASES SUMMARIZED

SUMMARIES CONTAIN LINKS TO FULL TEXT

Asplundh Tree Expert Co., Cincinnati, OH

Bell Atlantic Corp., New York, NY

Cargill, Inc., Topeka, KS

Chelsea Place, Trinity Hill, and Wintonbury Health Center, Hartford, CT

Morse (Ed) Auto Park, Lake Park, FL

Penn Tank Lines, Ft. Lauderdale, FL

Van Lear Equipment, Inc., Reading, PA

OTHER CONTENTS

List of Decisions of Administrative Law Judges

List of No Answer to Compliance Specification Cases

The Weekly Summary of NLRB Cases is prepared by the NLRB Division of Information and is available on a paid subscription basis. It is in no way intended to substitute for the professional services of legal counsel, or for the authoritative judgments of the Board. The case summaries constitute no part of the opinions of the Board. The Division of Information has prepared them for the convenience of subscribers.

If you desire the full text of decisions summarized in the Weekly Summary, you can access them on the NLRB's Web site (www.nlrb.gov). Persons who do not have an Internet connection can request a limited number of copies of decisions by writing the Information Division, 1099 14th Street NW, Suite 9400, Washington, DC 20570 or fax your request to 202/273-1789. Administrative Law Judge decisions, which are not on the Web site, also can be requested by contacting the Information Division.

All inquiries regarding subscriptions to this publication should be directed to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, 202/512-1800. Use stock number 731-002-0000-2 when ordering from GPO. Orders should not be sent to the NLRB.

Solomon Health Services, LLC d/b/a Chelsea Place, Trinity Hill, and Wintonbury Health Center (34-CA-8982; 336 NLRB No. 111) Hartford, CT Nov. 26, 2001. The Board affirmed the administrative law judge's findings that the Respondent was a "perfectly clear" successor within the meaning of NLRB v. Burns International Security Services, 406 U.S. 272 (1972), having an obligation to bargain with Health Care Employees District 1199 before changing preexisting terms and conditions of employment; and that the Respondent violated Section 8(a)(5) and (1) of the Act when it unilaterally failed to credit the unit

employees with all of their unused vacation, sick, and personal leave time that accrued prior to the Respondent's April 1, 1999 commencement of operations. The Board rejected the Respondent's contention in its exceptions that the parties bargained to an agreement on the accrued benefits issue. [HTML] [PDF]

The Respondent provides skilled and semiskilled health care services. It purchased the three Hartford, CT nursing homes involved in this proceeding known as Chelsea Place, Trinity Hill, and Wintonbury Health Center from a State-appointed Receiver. On February 23, 1999, the Respondent, in order to avert a threatened strike during its negotiations with the Receiver to purchase the business, pledged, in writing, to the Union that if the court approved the purchase, the Respondent would "hire the current bargaining unit employees" and would "pay existing wages and benefits in effect immediately prior to our purchase while good faith negotiations continue." On April 1, when the Respondent assumed ownership of the three facilities, it hired virtually all of the predecessor's employees and continued, except for the accrued vacation, sick, and personal leave time that was "on the books" as of the change of ownership. It unilaterally eliminated all accrued paid leave balances of the unit employees.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Health Care Employees District 1199; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Hartford on July 27, 2000. Adm. Law Judge David L. Evans issued his decision Nov. 21, 2000.

Penn Tank Lines (12-CA-19505, et al.; 336 NLRB No. 112) Ft. Lauderdale, FL Nov. 29, 2001. Agreeing with the

* * 1

administrative law judge, the Board found the Respondent violated Section 8(a)(5) of the Act by withdrawing recognition from Teamsters Local 390 and making unilateral changes in the waiting-time and lost-time pay for its drivers, and Section 8(a)(3) and (1) by discharging Robert Miller in May 1998, suspending Joseph Steckler in November 1998, conditioning Steckler's reinstatement on his refraining from engaging in union activities, and ultimately discharging him. The Board found, as did the judge, that the employees' October 29, 1998 decertification petition was tainted by unremedied unfair labor practices and the Respondent unlawfully withdrew recognition from the Union based on the petition. It entered an affirmative bargaining order, with its temporary decertification, saying it is necessary to fully remedy the Respondent's violations. [HTML] [PDF]

suspended, the Board said the judge erred in failing to make this finding. It dismissed the complaint allegation that the Respondent violated Section 8(a)(1) by encouraging employees to form a drivers' committee in lieu of bargaining through the Union. The General Counsel had excepted to the judge's failure to address the allegation, relying on the credited testimony of driver Robert Miller concerning his conversation with human resources consultant, Charles Nicholas. Contrary to the General Counsel's assertion, the Board found Nicholas did not unlawfully encourage employees to take future action to abandon the Union and merely conveyed the economic reality that if the employees had decided instead to form their own committee, they would not now be subject to the dues that unions typically collect from the employees they represent. See *Office Depot*, 330 NLRB No. 99, slip op. at 3 (2000).

In concluding that the Respondent violated Section 8(a)(1) by warning Steckler for engaging in union activities before he was

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by Teamsters Local 390; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Miami, Dec. 13-14, 1999. Adm. Law Judge Raymond P. Green issued his decision March 28, 2000.

* * *

Van Lear Equipment, Inc. (4-CA-26781; 336 NLRB No. 114) Reading, PA Nov. 26, 2001. On a stipulated record, the Board held that Respondent is a successor employer to Panther Valley School District (PVSD) with regard to its Panther Valley, PA facility, and that the Respondent violated Section 8(a)(5) and (1) of the Act by failing to recognize and bargain collectively with Teamsters Local 773 as the exclusive bargaining representative of its Panther Valley bus drivers. [HTML] [PDF]

The Respondent provides bus transportation to school districts throughout Pennsylvania with its headquarters in Reading,

Pennsylvania and six district facilities, including Panther Valley. In January 1997, the Union represented a unit at PVSD of 38 employees, 21 were full-time and part-time bus drivers. From July 1, 1994 through June 30, 1997, the Union and PVSD were parties to a collective-bargaining agreement covering the PVSD unit. On January 24, PVSD awarded the Respondent the contract for pupil transportation services for a 5-year period.

The Board held that as of August 1997, the Respondent employed 26 bus drivers at Panther Valley (19 were former PVSD bus drivers). In October, when the Union first requested the Respondent to recognize and bargain with it as the representative of the Panther Valley drivers, the Respondent employed a substantial and representative unit complement, as its Panther Valley location was already fully staffed. The Board found a unit composed of the Respondent's Panther Valley bus drivers is appropriate, noting that single-location units are presumptively appropriate and the Respondent failed to overcome the presumption. There is substantial continuity between PVSD and the Respondent at its Panther Valley facility and the Respondent, with regard to its Panther Valley facility, is a successor to PVSD, it held.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Teamsters Local 773; complaint alleged violation of Section 8(a)(1) and (5). Parties waived a hearing before an administrative law judge.

~ ~

Cargill, Inc. (17-RC-11982; 336 NLRB No. 118) Topeka, KS Nov. 30, 2001. Affirming the Acting Regional Director, Members Liebman and Walsh found that the unit petitioned for by the Bakery Workers International, limited to production and maintenance employees working at the Employer's East facility in Topeka, Kansas, is appropriate. Chairman Hurtgen, dissenting, found that the presumption in favor of a single facility has been rebutted. [HTML] [PDF]

The Employer's grain division, called Ag Producer Services (APS) is organized in groups of approximately 39 entities called "farm service groups." The two Topeka grain storage elevators at issue are located two miles apart and constitute a farm service center and a single profit center within the Employer's Twin Rivers Farm Service Group, which includes five other elevators in other cities. Each of the five elevators is considered a separate profit center. The Employer contended the appropriate unit must include production and maintenance employees at both facilities in Topeka because of their functional integration and the close community of interest between the employees. The single superintendent for both facilities testified that there were 13-14 interchanges between the two facilities in the 8-month period from November 2000 to July 2001.

Finding that the Employer failed to rebut the single-facility presumption, the majority considered such factors as the centralized control over daily operations and labor relations, including the extent of local autonomy; similarity of skills, functions, and working conditions; degree of employee interchange; geographic proximity; and bargaining history, if any. *New Britain Transportation Co.*, 330 NLRB No. 57 (1999); *Rental Uniform Service*, 330 NLRB No. 44 (1999). The majority held the separate local autonomy, the geographic separation, and the lack of substantial interchange together outweigh the factors cited by dissenting Chairman Hurtgen, including the fact that the East and West facilities are a single profit center.

Chairman Hurtgen found, given the small total number of employees (23) at the two facilities, 13-14 interchanges among them over an 8-month period demonstrates substantial interchange and is itself a factor mitigating against a one-facility unit. He held *New Britain* is distinguishable, noting the employees in that case were drivers, and thus it was essential to know the number of routes and charters involved in the interchanges and the employer failed to provide that context. Chairman Hurtgen also noted: the East and West facilities are on the same rail line and are considered a single profit center, there is a common seniority list, and the bargaining history of the Employer is inconsistent with a single facility unit. Regarding the latter factor, he pointed out that the Employer's two Kansas City elevators are in a single bargaining unit, as are its two flour mills in Topeka.

(Chairman Hurtgen and Members Liebman and Walsh participated.)

* * *

Morse Operations Inc., d/b/a Ed Morse Auto Park (12-CA-18836, et al.; 336 NLRB No. 115) Lake Park, FL Nov. 30, 2001.

(1) of the Act by, among others, reducing the pay rate of employees and giving pay raises and benefits to employees without first giving the National Organization of Industrial Trade Unions an opportunity to bargain over the matter, discharging auto repair technicians Peter Hanscom, Joseph Niciforo, Eton Leung, and Henry Brodhurt because of their union activity, soliciting employees to deal directly with the Respondent regarding raises and terms and conditions of employment, and telling employees that it would be futile for them to support the Union as their bargaining representative. [HTML] [PDF]

In adopting the judge's finding that the Respondent violated Section 8(a)(1) by Assistant Service Manager Dan Crawford's

The Board upheld the administrative law judge's findings that the employer committed violations of Section 8(a)(5), (3), and

statement to discriminatee Hanscom on June 6, 1997, that he was going to "stop" Hanscom and "have the Union thrown out," the Board found it unnecessary to pass on the judge's finding that Crawford was a supervisor within the meaning of Section 2 (11) of the Act. Noting the Respondent stipulated at the outset of the hearing that Crawford was an agent of the Respondent within the meaning of Section 2(13), the Board found Crawford's threat is attributable to the Respondent.

The Board found the General Counsel met his burden of showing that protected conduct was a motivating in the Respondent's discharge of Hanscom, Niciforo, Leung, and Brodhurst, and that the Respondent's contention that all four discriminatees would have been terminated for lawful reasons absent their protected activity is not supported by the record. It found merit in the General Counsel's exception to the judge's failure to find that Brodhurst's discharge, which was based not only on his union activity but also on his protected concerted activity in protesting a pay reduction, independently violated Section 8(a)(1) as well as Section 8(a)(3). This finding does not affect the judge's recommended Order.

February 1, 1998, without bargaining with the Union, the Board relied on, in addition to the credited evidence cited by the judge, the Respondent's stipulation that Ed and Ted Morse "wholly owned" Global Warranty Corp., and the record evidence establishing that the Morses had a major interest in Fidelity Warranty Services. The Respondent contended two "outside" warranty companies imposed the pay reduction. The Board noted the periodic changes in the "Chilton's manual" of approved work time estimates, also relied on by the Respondent, are correlated to highly specific repair tasks and "do not provide a basis for generalized pay reductions of the type imposed by the Respondent on this occasion."

In adopting the judge's finding that the Respondent violated Section 8(a)(5) and (1) by reducing employees' pay effective

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charges filed by National Organization of Industrial Trade Unions; complaint alleged violation of Section 8(a)(1), (3), and (5). Hearing at Miami, January 11-15 and Feb. 22-24, 1999. Adm. Law Judge Howard I. Grossman issued his decision Sept. 7, 1999.

Asplundh Tree Expert Co. (9-CA-36005; 336 NLRB No. 116) Cincinnati, OH Nov. 30, 2001. In agreement with the administrative law judge, the Board found that the Respondent violated Section 8(a)(1) of the Act by threatening to lay off Dennis Brinson and by discharging Brinson and Eric Crabtree because they concertedly complained about working conditions and briefly withheld their services in support of their complaints while they were on a temporary work assignment in Canada. [HTML] [PDF]

The Respondent contended, among others, that the Board lacked jurisdiction over the unfair labor practices alleged because the events that gave rise to this case took place in Canada. In rejecting the Respondent's contention, the judge said that Brinson and Crabtree were Americans living in the United States whose regular work was performed in the United States, and whose conduct consisted of protesting working conditions on a brief, temporary job in Canada.

The Respondent did not simply replace Brinson and Crabtree on their Canadian assignment, the Board asserted, but instead, as

the judge found, effectively fired them from their jobs in the United States. The Board agreed with the judge that assertion of jurisdiction will not lead to a conflict between the laws of the United States and Canada or otherwise interfere with foreign relations. It wrote: "Although the Act does not protect Americans who are permanently employed outside of the United States, even by American firms, Americans whose permanent employment relationships are with American firms in the United States do not lose the protection of the Act while on temporary assignment outside of this country, particularly where extending the

Weekly Summary, December 7, 2001 (W-2820)

Page 5 of 6

Act's protections would not interfere with the laws of another nation. As we have found, no circumstances here implicate the concerns associated with extraterritorial application of domestic law."

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by Dennis A. Brinson; complaint alleged violation of Section 8(a)(1). Hearing at Cincinnati on June 3 and 4, 1999. Adm. Law Judge Richard H. Beddow, Jr. issued his decision Sept. 22, 1999.

. . .

Bell Atlantic Corp. (2-CA-32010; 336 NLRB No. 113) New York, NY Nov. 30, 2001. The Board, on the recommendation of the administrative law judge, dismissed the complaint allegations that the Respondent violated Section 8(a)(1) and (5) of the Act by failing to notify and bargain with the Union regarding its August 24, 1998 decision to close the Respondent's Brooklyn and Manhattan, NY offices and to permanently transfer bargaining unit work from those offices to non unit facilities. The judge found that the Union waived any right it had under the Act to bargain about these decisions by its inaction. [HTML] [PDF]

Packing Co., 303 NLRB 386 (1991), enfd. 1 F.3d 24 (D.C. Cir. 1993). The Respondent notified the Union of its plans to close the Brooklyn and Manhattan payroll office and to relocate unit work on August 24 and contended that its notification was timely because implementation of the plan was not scheduled to commence for at least 6 months. The General Counsel and the Union argued that the Respondent's notice to the Union on August 24 was nothing more than a "fait accompli" because of the Respondent's almost simultaneous announcement to the employees and its denial of the Union's request that it postpone the scheduled announcement.

It was undisputed that the Respondent's decision to relocate unit work was a mandatory subject of bargaining under *Dubuque*

(Chairman Hurtgen and Members Liebman and Walsh participated.)

Charge filed by the Communications Workers (CWA); complaint alleged violation of Section 8(a)(1) and (5). Hearing in New York, October 6-8 and 29, 1999. Adm. Law Judge Michael A. Marcionese issued his supplemental decision April 5, 2000.

* * *

LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Corporate Interiors, Inc. (Carpenters District Council of Kansas City) Olathe, KS November 23, 2001. 17-CA-20750, 20979; JD(ATL)-17-01, Judge Margaret G. Brakebusch.

Hilman Rollers (Teamsters Local 469) Marlboro, NJ November 23, 2001. 22-CA-23899E; JD(NY)-57-01, Judge Steven Fish.

Joseph Stallone Electrical Contractors Inc. (Electrical Workers [IBEW] Local 269) Bristol, PA November 26, 2001. 4-CA-30370; JD-148-01, Judge William G. Kocol.

Dresser Industries, Inc. (Auto Workers [UAW] Local 354) Salisbury, MD November 26, 2001. 5-CA-29346; JD-149-01, Judge Jerry M. Hermele.

Beverly Health and Rehabilitation Services, Inc. and its wholly-owned subsidiary, Beverly Enterprises-Alabama, Inc. d/b/a Beverly Healthcare - Oneonta (Food & Commercial Workers Local 1657) Oneonta, AL November 29, 2001. 10-CA-32797, 10-RC-15153; JD(ATL)-75-01, Judge Keltner W. Locke.

Grinnell Fire Protection Systems Company (Road Sprinkler Fitters Local 669 and the Plumbers) Exeter, NH November 29, 2001. 5-CA-25227, 25406; JD-150-01, Judge Richard A. Scully.

* * *

NO ANSWER TO COMPLIANCE SPECIFICATION

(In the following case, the Board granted the General Counsel's motion for summary judgment based on the Respondent's failure to file an answer to the compliance specification.)

I.W.G. Inc. d/b/a AAA Fire Sprinkler, Inc. (Road Sprinkler Fitters Local 669) (27-CA-11771, 11870; 336 NLRB No. 106) Denver and Arvada, CO November 23, 2001.